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9 Attorneys for Timothy H. Shaffer, Chapter 11 Trustee

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF ARIZONA**

12 In re:

13 POTENTIAL DYNAMIX, LLC,

14 Debtor.

Case No. 2-11-bk-28944-DPC

CHAPTER 11

**APPLICATION TO EMPLOY ASHWORTH
CONSULTING, LLC AS CONSULTING
EXPERT NUNC PRO TUNC**

15 Timothy H. Shaffer, the Chapter 11 Trustee (the "**Trustee**"), has retained Schian Walker, P.L.C.
16 (the "**Firm**") to represent him in the matter of *Timothy Shaffer v. Amazon Services LLC*, Adv. No. 2-13-
17 ap-00799 (the "**Adversary Proceeding**"). To prosecute the Adversary Proceeding, the Firm and the
18 Trustee require the assistance of Ashworth Consulting, LLC ("**Ashworth**") to serve as the Firm's
19 consulting expert under Federal Rule of Civil Procedure 26(b)(4)(D). This Application is supported by
20 the attached Memorandum of Points and Authorities, the *Verified Statement of Stephen A. Ashworth on
21 Behalf of Ashworth Consulting, LLC Pursuant to Bankruptcy Rule 2014* attached hereto as Exhibit "A"
22 and the entire relevant record in this case.

23 DATED this 19th day of August, 2015.

24 SCHIAN WALKER, P.L.C.

25 By /s/ SCOTT R. GOLDBERG, #015082

26 Dale C. Schian

Scott R. Goldberg

Attorneys for the Trustee

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 1. Among other things, the Adversary Proceeding concerns allegations that Amazon
3 Services LLC ("**Amazon**") has failed to account for inventory that the above-captioned debtor
4 ("**Debtor**") shipped to Amazon under the Fulfilment By Amazon ("**FBA**") program.

5 2. Amazon prepares reports ("**Reports**") for sellers that participate in the FBA program.
6 Ashworth will assist the Firm and the Trustee in evaluating the data underlying the Reports.

7 3. During the Adversary Proceeding, Amazon has used non-FBA data and software tools to
8 conduct its own "deep dive" investigations. Ashworth will assist the Firm and the Trustee in evaluating
9 the data and the tools that Amazon used to conduct its own investigations.

10 4. In the Adversary Proceeding, Amazon has responded to the Trustee's discovery requests
11 by producing data without aggregating it, explaining it, and without providing a data dictionary to
12 enable the Trustee to interpret it. Ashworth will assist the Trustee and the Firm in evaluating the data
13 that Amazon has produced.

14 5. Ashworth is being retained as a consulting expert to the Firm under Federal Rule of Civil
15 Procedure 26(b)(4)(D). Also, Ashworth will not have a material role in the administration of the
16 bankruptcy case. Under these facts, this Application likely is not required to be filed under Code § 327.
17 *See In re Napoleon*, 233 B.R. 910 (Bankr. D. N.J. 1999).

18 6. For the reasons set forth in ¶ 5 above, the Application was not filed sooner and is now
19 being filed on a precautionary basis only. To the extent that Code §§ 327 and 328 apply to the
20 Application, approval of the Application is being sought on a *nunc pro tunc* basis to about June 2014.

21 7. Any change in Ashworth's status will be promptly brought to the Court's attention
22 through the filing of an amendment to this Application.

23 8. Ashworth will seek to be paid from the bankruptcy estate and will seek Court approval
24 for payment under Code § 330 and Bankruptcy Rule 2016.

25 9. As set forth in the Bankruptcy Rule 2014 statement attached hereto as Exhibit "A,"
26 Ashworth has no connections to the Debtor, its creditors or to the United States Trustee.

10. Ashworth is a disinterested party related to the matters in which it is to be retained.

11. Notice of this Application has been provided to Amazon, the Official Committee of Unsecured Creditors, the Debtor, the Office of the United States Trustee, and any party that has requested notice.

DATED this 19th day of August, 2015.

SCHIAN WALKER, P.L.C.

By /s/ SCOTT R. GOLDBERG, #015082

Dale C. Schian
Scott R. Goldberg
Attorneys for the Trustee

COPY of the foregoing
e-mailed this 19th day
of August, 2015, to:

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/s/ DEBBI STEPHENS

EXHIBIT "A"

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CHAPTER 11

**VERIFIED STATEMENT OF STEPHEN A.
ASHWORTH ON BEHALF OF ASHWORTH
CONSULTING, LLC PURSUANT TO
BANKRUPTCY RULE 2014**

15 Stephen A. Ashworth, being first duly sworn upon his oath, deposes and states:

16 1. I make this declaration based upon my personal knowledge in support of the *Application*
17 *to Employ Ashworth Consulting, LLC as Consulting Expert* (the "**Application**").

18 2. I am the managing member of *Ashworth Consulting, LLC* (the "**Company**").

19 3. The Company's expertise is in the area of data collection, management, administration, and
20 presentation.

21 4. I am familiar with the claims that Timothy H. Shaffer, the Chapter 11 Trustee (the
22 "**Trustee**"), has asserted against Amazon Services LLC ("**Amazon**") in the matter of *Timothy Shaffer v.*
23 *Amazon Services LLC*, Adv. No. 2:13-ap-00799 (the "**Adversary Proceeding**").

24 5. The Company is duly qualified to perform all functions that are required in relation to its
25 proposed employment as consulting expert for the Trustee's counsel, Schian Walker, P.L.C. (the "**Firm**").

26 6. As set forth in the Application, the Company has agreed to provide assistance to the Firm
in evaluating the inventory claims that have been asserted in the Adversary Proceeding against Amazon.

7. The Company will also perform any other data base consulting services as directed by the

1 Firm and may provide expert testimony as needed.

2 8. The Company will also evaluate discovery data that Amazon has produced.

3 9. The Company's services will complement the services that Ness Consulting LLC has
4 agreed to provide to the Firm. Ness Consulting LLC's expertise is in the area of inventory management,
5 accounting, and reconciliation. The Company's expertise is in the area of data organization, management
6 and administration.

7 10. The Company will seek compensation from the bankruptcy estate pursuant to Code § 330
8 and Bankruptcy Rule 2016.

9 11. The Company will charge for its services on an hourly basis in accordance with its standard
10 hourly rates in effect on the date that services are rendered. The current hourly rate charged by the
11 Company is \$190.00 per hour.

12 12. The Company will maintain detailed records of the actual and necessary costs incurred in
13 connection with the aforementioned services.

14 13. Based on my investigation to date, neither the Company nor any of its directors or
15 associates has any interest that is adverse to the interests of the Debtor or its estate, and has no connection
16 or relationship to the Debtor's creditors, to the United States Trustee or to any other interested party in this
17 case.

18 14. The Company has not entered into any arrangement to share any compensation that may
19 be awarded by the Court, except as permitted under Bankruptcy Code § 504(b).

20 I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and
21 correct to the best of my knowledge, information and belief.

22 DATED: August __19__, 2015.

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Digitally signed by Stephen A. Ashworth
DN: dc=COM, dc=ASHCONLLC, ou=USER
ACCOUNTS, cn=Stephen A. Ashworth,
email=sashworth@ashconllc.com
Date: 2015.08.19 14:20:33 -07'00'

Stephen A. Ashworth